

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

WILLIE LEE HENDERSON, III,)	
)	
Petitioner,)	
)	
v.)	No. 1:24-CV-151-SNLJ
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court upon review of the file. For the following reasons, this action will be dismissed without prejudice.

On August 12, 2024, petitioner filed a motion titled, “Defendant’s Emergency Collateral Attack on the Judgment,” brought pursuant to 28 U.S.C. § 2255. ECF No. 1. On August 15, 2024, the Court reviewed the filing and determined it was defective because he did not use the proper form as required by the Local Rules of this Court. ECF No. 2 (citing E.D. Mo. L.R. 2.06(A) (requiring all actions by self-represented litigants to be filed on Court-provided forms)). Consequently, the Court sent petitioner a proper “Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody” form, and directed him to submit an amended motion utilizing the form. *Id.* The amended motion was due no later than September 16, 2024.

On August 26, 2024, the Court received notice from petitioner that his address had changed. The Clerk of Court updated the file. On September 30, 2024, petitioner filed an identical copy of his original motion titled, “Defendant’s Emergency Collateral Attack on

the Judgment.” ECF No. 4. On October 1, 2024, the Court struck the filing as duplicative. Additionally, in consideration of petitioner’s self-represented status, the Court, on its own motion, provided petitioner with an additional thirty days, or until October 31, 2024, to comply with the Court’s Order directing him to resubmit his motion on a proper Court form. On the same day the extension was granted, the Court received a motion from petitioner requesting additional time to file his form. Because the Court had already permitted him a thirty-day extension, petitioner’s request was moot.

As of the date of this Memorandum and Order, petitioner has *not* complied with the Court’s directive to amend his motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody on the proper Court form. The Court gave petitioner meaningful notice of what was expected, cautioned him that his case would be dismissed if he failed to timely comply, and gave him additional time to comply. Therefore, this action will be dismissed without prejudice due to petitioner’s failure to comply with the Court’s August 15, 2024 and October 1, 2024 Memorandum and Orders and his failure to prosecute his case. *See* Fed. R. Civ. P. 41(b); *see also Brown v. Frey*, 806 F.2d 801, 803-04 (8th Cir. 1986) (a district court has the power to dismiss an action for the petitioner’s failure to comply with any court order).

Accordingly,

IT IS HEREBY ORDERED that this action is **DISMISSED** without prejudice. A separate order of dismissal will be entered herewith.

IT IS FURTHER ORDERED that petitioner's October 1, 2024, motion for extension of time [ECF No. 5] is **DENIED as moot** because the Court had already granted petitioner an additional thirty (30) days to submit his motion on a Court-provided form.

IT IS HEREBY CERTIFIED that an appeal from this dismissal would not be taken in good faith.

Dated this 26th day of November, 2024.

A handwritten signature in black ink, appearing to read "Stephen N. Limbaugh, Jr.", written over a horizontal line.

STEPHEN N. LIMBAUGH, JR.
SENIOR UNITED STATES DISTRICT JUDGE